

CHAPTER 59-03 TRUSTS RELATING TO REALTY

59-03-01. Application of chapter. Uses and trusts in relation to real property are those only which are specified in this chapter.

59-03-02. Purposes for which express trusts created. Express trusts may be created for any of the following purposes:

1. To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust.
2. To mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon.
3. To receive the rents and profits of real property and pay or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for the person or for the person's family during the life of such person or for any shorter term, subject to the rules of title 47.
4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by chapter 47-03.

No trust relating to real property shall fail nor shall any use relating to real property be defeated because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee, notwithstanding the provisions of sections 59-03-04 and 59-03-05. Power conferred by any such instrument on a trustee to sell, lease, encumber, or otherwise dispose of property therein described shall be effective and no person dealing with such trustee shall be required to make further inquiry as to the right of such trustee to act, nor shall the person be required to inquire as to the disposition of any proceeds. Nothing in this section shall be construed to affect any right which a creditor may otherwise have against a trustee or beneficiary or to affect the rule against perpetuities.

59-03-03. Requisites of trust relating to real property. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee or by the trustee's agent thereto authorized in writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law.

59-03-03.1. Trustee to convey and transfer real estate. When title to real estate is taken in the name of a trustee, it shall be presumed that such trustee has the power to sell, convey, and encumber such real estate unless the deed of conveyance to the trustee specifically restricts such power.

59-03-04. Direct transfer of realty necessary. Except as otherwise provided by law, each disposition of real property, whether by transfer or will, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person, and if made to any other person to the use of or in trust for another, no estate or interest vests in the trustee, but the trustee must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

59-03-05. Legal estate deemed vested in person with right to possession and profits. Every person, who by virtue of any transfer or devise is entitled to the actual possession of real property and the receipt of the rents and profits thereof, is deemed to have a legal estate

therein of the same quality and duration and subject to the same conditions as the person's beneficial interest.

59-03-06. Trusts valid if connected with power. The provisions of sections 59-03-04 and 59-03-05 do not divest the estate of any trustee in a trust, if the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

59-03-07. Implied trusts not affected by foregoing provisions. The provisions of sections 59-03-01, 59-03-04, 59-03-05, and 59-03-06 do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this title.

59-03-08. Innocent purchaser protected against implied trust. No implied or resulting trust can prejudice the right of a purchaser or encumbrancer of real property for value and without notice of the trust.

59-03-09. Protection of creditors and purchasers without notice of trust. Where an express trust is created in relation to real property but is not contained nor declared in the grant to the trustee or in an instrument signed by the trustee and recorded in the same office with the grant to the trustee, such grant shall be deemed absolute in favor of the subsequent creditors of the trustee not having notice of the trust and in favor of purchasers from such trustee without notice and for a valuable consideration.

59-03-10. When creditors of beneficiary may reach trust profits. When a trust is created to receive the rents and profits of real property and no valid direction for accumulation is given, the surplus of such rents and profits beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created is liable for the claims of the creditors of such person in the same manner as personal property which cannot be reached by execution.

59-03-11. Power in trust not prohibited. Nothing in this chapter prevents the creation of a power in trust for any of the purposes for which an express trust may be created.

59-03-12. When devise valid as power in trust. A devise of real property to executors or other trustees to be sold or mortgaged where the trustees also are not empowered to receive the rents and profits, vests no estate in them, but the trust is valid as a power in trust.

59-03-13. When trust valid as power in trust - Realty passes. If an express trust relating to real property is created for any purpose not enumerated in this chapter, such trust vests no estate in the trustee, but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions relating to such powers contained in chapter 59-05. In every case where a trust is valid as a power in trust, the real property to which the trust relates remains in or passes by succession to the person otherwise entitled, subject to the execution of the trust as a power in trust.

59-03-14. Whole estate vests in trustees. Except as otherwise provided in this chapter, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property but may enforce the performance of the trust.

59-03-15. Trustor may prescribe disposition if trust fails or ends. Notwithstanding anything contained in section 59-03-14, the author of a trust in its creation may prescribe to whom the real property to which the trust relates shall belong in the event of the failure or termination of the trust and may transfer or devise such property, subject to the execution of the trust.

59-03-16. Estate of grantee. The grantee or devisee of real property subject to a trust acquires a legal estate in the property as against all persons except the trustees and those lawfully claiming under them.

59-03-17. Disposition of estates not embraced in trust. If an express trust is created in relation to real property, every estate not embraced in the trust and not otherwise disposed of is left in the author of the trust or the author's successors.

59-03-18. Beneficiary restrained from disposing of interest. The beneficiary of a trust for the receipt of the rents and profits of real property or for the payment of an annuity out of such rents and profits may be restrained from disposing of the beneficiary's interest in such trust during the beneficiary's life or for a term of years by the instrument creating the trust.

59-03-19. When transfer of trustee void. If a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustee in contravention of the trust is absolutely void.

59-03-20. When estate of trustee ceases. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.